

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

JOHANNA HOLMES

CIVIL ACTION NO. 06-0400

VS.

JUDGE JAMES

ANGUS CHEMICAL CO.

MAGISTRATE JUDGE HAYES

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a Motion to Dismiss filed by defendant, Angus Chemical Co. ("Angus") pursuant to F.R.C.P. Rule 41(b), for failure to prosecute her claim and for failure to comply with the orders of this court (Document No. 17). The motion is unopposed.

BACKGROUND

On February 23, 2006, the plaintiff, Johanna Holmes ("Holmes"), filed this suit in the Fourth Judicial District Court, Parish of Ouachita, alleging claims of sexual harassment and discrimination the part of Angus. The case was removed to this Court on March 10, 2006. (Document No. 3). On March 15, 2006, the Court issued its standing civil case order, which set forth the deadline for the parties to exchange their initial disclosures. (Document No. 7). Holmes has failed to provide any initial disclosures as required by the order and the Federal Rules.

Per the first scheduling order issued by the Court on June 7, 2006, (Document No. 12) Holmes was required to submit her witness list by August 7, 2006. She failed to do so. After

Holmes' attorney withdrew from the case in October 2006, the original scheduling order was vacated and a new order was issued on October 19, 2006 (Document No. 15); however, Holmes again failed to comply with the order. Furthermore, Angus served its first set of Interrogatories and Requests for Production on Holmes on June 21, 2006. The documentation submitted by Angus indicates that its counsel has made several attempts to obtain responses and to schedule Holmes' deposition. However, Holmes has never provided responses to the discovery requests nor has she provided any dates to be deposed.

Finally, on December 4, 2006, after Holmes' second attorney withdrew from the case, the Court issued an order requiring Holmes to retain new counsel within 30 days of the order or to notify the Court in writing that she would be proceeding *pro se*. After Holmes failed to comply with the order and after Angus filed the instant motion, the Court issued another order on March 5, 2007, giving Holmes an additional 30 days to comply with the requirements of the original order and warning her that failure to do so would result in dismissal of the suit with prejudice. (Document No. 20). More than 30 days have lapsed and Holmes has still failed to comply with any of the court's orders or even to respond to the motion to dismiss.

LAW AND ANALYSIS

Federal Rule of Civil Procedure Rule 41(b) permits dismissal of claims "[f]or failure of the plaintiff to prosecute or to comply with ... these rules or any order of court..." Fed. R. Civ. P. 41(b). In this case, Holmes has not complied with any of the orders of this Court, nor has she responded to Angus's repeated discovery requests, despite several extensions of time and a specific warning that failure to comply would result in the dismissal of her suit with prejudice.


Therefore, **IT IS RECOMMENDED** that defendant's motion to dismiss be **GRANTED**

and that plaintiff's suit be **DISMISSED WITH PREJUDICE at her cost**, in accordance with the provisions of FRCP Rule 41(b).

Under the provisions of 28 U.S.C. §636(b)(1)(C) and FRCP Rule 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED at Monroe, Louisiana, this 9th day of April, 2007.


KAREN L. HAYES
U. S. MAGISTRATE JUDGE